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IN THE
Supreme Court of the United States

DENNIS HECKER, JONNA DUANE,
AND JANICE RIGGINS
Petitioners,

v.

DEERE & COMPANY, FIDELITY MANAGEMENT
TRUST COMPANY, AND FIDELITY
MANAGEMENT
AND RESEARCH COMPANY,
Respondents.

On Petition for a Writ of Certiorari
To the United States Court of Appeals
For The Seventh Circuit

BRIEF OF AARP, CONSUMER FEDERATION OF AMERICA, FUND DEMOCRACY, NATIONAL SENIOR CITIZENS LAW CENTER, AND PENSION RIGHTS CENTER AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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STATEMENT OF INTEREST[1]

AARP is a nonpartisan, nonprofit membership organization of nearly 40 million persons age 50 and older. Its mission is to help people 50+ achieve independence, choice and control in ways that are beneficial and affordable to them and society Through education, advocacy, and service, and by promoting independence, dignity, and purpose, AARP seeks to enhance the quality of life for all. In its efforts to foster the economic security of individuals as they age, AARP seeks to increase the availability, security, equity, and adequacy of public and private pension programs and the protections available to investors who accumulate savings outside of formal retirement plans.

Consumer Federation of America (CFA) is a nonprofit association of 300 consumer groups, which in turn represent more than 50 million individuals. CFA advances the consumer interest through research, education, and advocacy. As increasing numbers of people have come to rely on the nation's financial markets to fund their retirement and invest their savings, CFA has made enhancing investor protection a top legislative and regulatory priority. CFA's policies in this area are based on a fundamental belief

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[1] The parties have consented to the filing of this brief *Amici curiae* state that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief No person other than *amici*, its members, or its counsel made a monetary contribution to the preparation or submission of this brief

that investors are entitled to a marketplace that provides them with a choice of appropriate investments and service providers, the information necessary to make informed choices, protection against fraud and abuse, and effective remedies when they are defrauded.

Fund Democracy is a nonprofit organization based in Oxford, Mississippi, that advocates on behalf of mutual fund investors. Over the last decade, Fund Democracy has submitted dozens of comment letters on agency proposals, participated frequently in amicus briefs, testified on numerous occasions before Congress on financial services issues, and written dozens of articles on investor issues in the financial press.

The National Senior Citizens Law Center ("NSCLC") is a nonprofit organization that advocates nationwide to promote the independence and well-being of low-income older persons and people with disabilities. For more than 35 years, NSCLC has served these populations through litigation, administrative advocacy, legislative advocacy, and assistance to attorneys and paralegals in legal aid programs. ERISA is a critical safeguard for the economic security and well-being of older Americans, and has played an important role in reducing elderly poverty. NSCLC believes that holding ERISA-governed plans to a high standard of prudent management is necessary to fulfill ERISA's role of keeping Americans out of poverty in their later years.

The Pension Rights Center is a Washington, D.C. nonprofit, nonpartisan consumer organization, which has as its mission the protection and promotion

of retirement security for workers, retirees and their families. For the past 33 years, the Center has provided legal representation, and other assistance and information to hundreds of thousands of participants and beneficiaries and represented their interests before administrative agencies and Congress As more and more Americans participate in a "do-it-yourself" retirement system, it is critical that participants and beneficiaries not only receive accurate and complete information about their benefits and related fees, but that they can be confident that their retirement income plans are being prudently managed.

As part of their advocacy efforts to protect investors and preserve the legal means for redress when they are harmed in the marketplace, *amici* have participated as *amici curiae* in numerous cases involving investor protections, including the scope of a fiduciary's duties as well as legislative and regulatory protections against fraudulent and deceptive conduct. One or more of *amici*, independently or with others have filed a*micus curiae* briefs in cases involving the construction and application of federal securities laws. *See, e.g., Stoneridge Inv. Partners, LLC v. Scientific-Atlanta*, 128 S. Ct. 761 (2008) (AARP & CFA); *Merrill Lynch, Pierce, Fenner & Smith v. Dabit*, 547 U.S. 71 (2006) (AARP); *Dura Pharms., Inc v. Broudo*, 544 U.S. 336 (2005) (AARP & CFA); *SEC v. Edwards*, 540 U S. 389 (2004) (AARP); *SEC v Zandford*, 535 U.S. 813 (2002) (AARP & CFA). AARP and others of the *amici* also have filed briefs in numerous cases involving the duties of ERISA fiduciaries in the administration of pensions and other retirement plans. *See, e.g., LaRue v. DeWolff, Boberg & Assocs.*, 552 U.S. 248, 128 S. Ct. 1020 (2008); *Varity Corp. v. Howe*, 516 U.S. 489 (1996).

Given the primacy of 401(k) plans in the American workplace landscape, *see* AT&T *Corp.* v. *Hulteen* 129 S. Ct 1962 (2009); *LaRue v. DeWolff, Boberg, & Assocs., Inc.*, 128 S.Ct. 1020, 1025 (2008), it is imperative that participants have meaningful recourse under ERISA to protect their retirement savings and that fiduciaries of ERISA-governed private benefit plans be held to a high standard of duty to manage plans prudently. The resolution of the issues herein will have a direct and vital bearing on individuals' ability to obtain those benefits which will foster their economic security. *Amici*, therefore, submit their brief *amici curiae* to facilitate a full consideration by this Court of these issues.

SUMMARY OF ARGUMENT

The Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U S.C. § 1001, *et seq.*, was enacted to protect the interests of employees in private retirement benefit programs. With the increasing reliance on 401(k) plans and the new order of retirement financial self-reliance now promulgated in corporate culture, the protections provided by ERISA are more important than ever to the retirement security of millions of Americans. Significantly, the decision by the Seventh Circuit dilutes fiduciary obligations long-established under ERISA. First, the opinion fails to acknowledge that the fiduciary duty to prudently select investment options offered to plan participants must take into account the character of the plan, in this case a multi-billion dollar 401(k) plan with significant market power. Second, the Seventh Circuit improperly concluded that the selection of imprudent investment options by a fiduciary can be sheltered by the safe harbor of section 404(c), 29 U.S.C. § 1104(c) of ERISA.

By permitting Deere & Company ("Deere") to neglect exercising its market power when it provided only expensive "retail funds" that are typically reserved for small investors, and by failing to recognize that a fiduciary's selection of investment options both constrains the choices available to employees and provides the seal of approval from a supposedly trusted plan steward, the Seventh Circuit undermines the protections guaranteed by ERISA. Consequently, the Court has improperly put the retirement security of millions of Americans at risk by

transferring the hazards of the fiduciary's failure to select prudent investment options from its own shoulders to those of the plan participants.

ARGUMENT

A. 401(k) Plans Now Comprise The Primary Source Of Private Retirement Income Programs.

Private retirement pension benefit programs were established to provide a stable source of income to employees and their families upon retirement. However, since ERISA's passage, there has been a marked shift from defined benefit plans to defined contribution plans. Defined contribution plans have so eclipsed defined benefit plans that by 2005, approximately 55 million participants were covered by defined contribution plans, while only 21 million were covered by defined benefit plans. *LaRue v. DeWolff, Boberg & Assocs.*, 552 U.S. 248, 128 S. Ct. 1020 (2008); U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-07-530T, PRIVATE PENSIONS: INCREASED RELIANCE ON 401(K) PLANS CALLS FOR BETTER INFORMATION ON FEES 5 (March, 2007), *available at* http://www.gao gov/new. items/d07530t pdf. Of the various types of defined contribution plans available, 401(k) plans have become the most popular.[2] Dr. Allen Michel & Dr. Israel

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[2] As of 2005, there were approximately "436,000 401(k) plans that held about $2 4 trillion in assets for the retirement savings of more than 54 million plan participants—more than any other type of employer-sponsored pension plan in the United States " U S GOV'T ACCOUNTABILITY OFFICE, GAO-08-774, PRIVATE PENSIONS FULFILLING FIDUCIARY OBLIGATIONS CAN PRESENT CHALLENGES

Shaked, *Fiduciary Responsibility in the Case of Defined Contribution Plans*, 23 AM. BANKR. INST J. 46, 46 (2005).

The shift to defined contribution plans has caused a fundamental risk reallocation in retirement planning because the retirement security for most Americans now depends on the returns achieved by investment options made available through their 401(k) plans. Unlike a defined benefit plan, which generally is funded solely by the employer and is required to provide a life-time annuity as a distribution option, a defined contribution plan provides no guaranteed benefit because the amount received is dependent upon the level of employee and employer contributions and whether those investments experience growth or suffer losses during the life of the account. U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-08-8, PRIVATE PENSIONS: LOW DEFINED CONTRIBUTION PLAN SAVINGS MAY POSE CHALLENGES TO RETIREMENT SECURITY, ESPECIALLY FOR MANY LOW-INCOME WORKERS 4 (2007). *available at* http://www.gao.gov/new.items/d088.pdf. Accordingly, employees bear a far greater responsibility for the ultimate funding of their retirement income than previously. STRENGTHENING WORKER RETIREMENT SECURITY BEFORE THE H. COMM. ON EDUC. AND LAB., 111th Cong. 5 (2009) *available at* http://edlabor.house.gov/documents/111/pdf/testimony/20090224JohnBogleTestimony pdf (statement of John C. Bogle, Founder and Former Chief Executive of the Vanguard Group) (describing this transition to defined contribution plans as "a massive transfer from

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FOR 401(K) PLAN SPONSORS 1 (July 2008), *available at* http://www gao gov/new items/d08774.pdf

business enterprises to their employees of both investment risk (and return) and the longevity risk of retirement funding").

Moreover, for the vast majority of individuals now saving for retirement through 401(k) plans, the amount contributed and accumulated is critically important, as it is often their only source of private retirement income. "[M]ore than 60 percent of workers with pension coverage in 2003 had *only* a 401(k) plan or other defined contribution plan." AARP, *401(k) Participants' Awareness and Understanding of Fees* 2 (July 2007), *available at* http://assets.aarp.org/rgcenter /econ/ 401k_fees.pdf. The primacy of such plans to fund retirement makes it vital that 401(k) retirement plan participants be protected.

B. The Impact of Fees on Retirement Savings Plan Accumulations is Significant.

Because of the effect of compounding interest, offering investment options that under-perform other available options, even by seemingly small margins, significantly reduces the long-term retirement savings of 401(k) plan participants. Investment fees and expenses charged by investment managers are generally paid by participants out of plan assets. U S. GOV'T ACCOUNTABILITY OFFICE, GAO-07-21, PRIVATE PENSIONS: CHANGES NEEDED TO PROVIDE 401(K) PLAN PARTICIPANTS AND THE DEPARTMENT OF LABOR BETTER INFORMATION ON FEES 10 (2006), *available at* http:// www.gao.gov/new.items/d0721.pdf. These payments ultimately decrease the return on investment because the fees "are paid with funds that could otherwise be earning and compounding on a tax-deferred basis."

ARE HIDDEN 401(K) FEES UNDERMINING RETIREMENT SECURITY?: HEARING BEFORE THE H. COMM. ON EDUCATION & LABOR, 110th Cong. (2007) *available at* http://edlabor.house.gov/testimony/030607StephenButlertestimony.pdf (testimony of Stephen J. Butler, President of Pension Dynamics Corporation, Author and Weekly Financial Columnist on "Undermining Worker's Retirement Security"). This reduction in principal [or returns] can be critical, especially considering the low account balances of many 401(k) plans, 3 and "can significantly decrease retirement savings over the course of a career." GAO REPORT: INCREASED RELIANCE ON 401(K) PLANS, *supra*, at 10. This impact is demonstrated in a report by the Employee Benefits Security Administration:

> Assume that you are an employee with 35 years until retirement and a current 401(k) account balance of $25,000. If returns on investments in your account over the next 35 years average 7 percent and fees and expenses reduce your average returns by 0.5 percent, your account balance will grow to $227,000 at retirement, even if there are no further contributions to your account. If fees and expenses are 1.5 percent, however, your account balance will grow to only $163,000. The 1 percent difference in

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[3] In 2005, 84 percent of 401(k) account balances were less than $100,000 and 37 percent of participants had balances less than $10,000 GAO REPORT INCREASED RELIANCE ON 401(K) PLANS, *supra*, at 9-10

> fees and expenses would reduce your account balance at retirement by 28 percent.

EMPLOYEE BENEFITS SECURITY ADMINISTRATION, U.S. DEP'T OF LABOR, A LOOK AT 401(K) PLAN FEES, 2, *available at* http://www dol.gov/ebsa/pdf/401kFees Employee.pdf. Consequently, imprudent investment options offering even a small reduction in current investment performance can "seriously undermine the odds in favor of success for citizens who are accumulating savings for retirement." Bogle, *supra*, at 3

C. The Circuit Court's Holding Undermines The Statutory Language And Purpose Of ERISA By Failing To Acknowledge That Plan Managers Have A Fiduciary Duty To Prudently Select Plan Investment Options, Which Includes A Duty To Investigate Investment Vehicles In Light Of All Available Options.

The Seventh Circuit strayed from precedent established in other circuits by failing to recognize that ERISA's fiduciary duties include the duty to prudently select investment options made available to 401(k) plan participants. In order to protect the interests of employees and their beneficiaries in retirement plans, ERISA imposes the duties of loyalty and prudence on plan fiduciaries by establishing standards of conduct attaching to the fiduciaries' exercise of duties related to "the proper management, administration, and investment of plan assets," *Mertens v. Hewitt Assocs* , 508 U.S. 248, 251 (1993) (citation omitted).

Specifically, circuit courts have recognized that these duties apply to the selection of investment options made available to plan participants. *See, e.g., DiFelice v. U.S. Airways, Inc.*, 497 F.3d 410, 418 (4th Cir. 2007) ("[A] fiduciary of a defined contribution, participant-driven, 401(k) plan created to provide retirement income for employees who is given discretion to select and maintain specific investment options for participants, must exercise prudence in selecting and retaining available investment options").4 Thus, plan sponsors cannot, without violating ERISA, set plan participants up to fail by presenting them with imprudent investment options.

In concluding that "no rational trier of fact could find . . . that Deere failed to satisfy that duty," the Seventh Circuit improperly minimized the scope of the applicable fiduciary duty by merely relying on the district court's determination that "there was a wide

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4 *See also, Fink v Nat'l Sav. and Trust Co.*, 772 F.2d 951, 957 (D C. Cir 1985) ("A fiduciary's independent investigation of the merits of a particular investment is at the heart of the prudent person standard"), *In re Unisys Sav Plan Litig.*, 74 F 3d 420, 435 (3d Cir 1996) ("[T]he most basic of ERISA's investment fiduciary duties, [is] the duty to conduct an independent investigation into the merits of the particular investment") The Department of Labor has similarly interpreted the fiduciary duties to apply to investment options made available through defined contribution plans. 57 Fed Reg 46906, 46924 n 27 (Oct 13, 1992) ("The [DOL] points out that the act of limiting or designating investment options which are intended to constitute all or part of the investment universe of an ERISA 404(c) plan is a fiduciary function"); *see also* Steven J Sacher, *et al*, EMPLOYEE BENEFITS LAW 696 (2d ed. 2000) ("[P]lan fiduciaries of Section 404(c) plans have a fiduciary obligation to make prudent selections of investment options")

range of expense ratios among the twenty Fidelity mutual funds and the 2,500 other funds available through BrokerageLink." *Id.* In so concluding, the court failed to address the prudence of considering retail mutual funds to the exclusion of other investment vehicles. It is not the quantity of options that constituted a breach of the fiduciary duty, but rather the failure to evaluate whether offering the array of retail funds or any single retail fund was prudent in light of the availability of institutional trust accounts that would have generated substantially higher investment returns by providing similar or better market performance at lower cost. *See* Sari M Alamuddin & Shannon M Callahan, *The Next ERISA Battleground: Mutual Fund Fees and Expenses*, BENEFITS LAW JOURNAL, Winter 2006 at 60 (noting that ERISA's prudential duty requires that "[w]here courts find a mutual fund is more expensive than its counterparts, the plan fiduciaries will likely have to show that the more expensive fund provided better returns, more services, or a different investment objective than a less expensive fund").

It is imprudent for the managers of a multi-billion dollar 401(k) plan to offer as investment options only "retail" mutual funds that are typically reserved for individuals or small investors and are not intended for use by large plans. ERISA requires that a fiduciary select investment options "with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man *acting in a like capacity* and familiar with such matters would use in the conduct of an *enterprise of a like character* and with like aims." 29 U.S.C. § 1104(a)(1)(B) (emphasis added) In this context, the "character" of the Deere

enterprise is a multi-billion dollar 401 (k) plan that possesses substantial market power. *Hecker v. Deere & Co.*, 556 F.3d 575 (7th Cir. 2009). Managers of such plans have the market power to offer institutional mutual funds and trust accounts that provide market performance similar to retail mutual funds at substantially lower cost. *See* DEPT. OF LABOR, PENSION WELFARE BEN. ADMIN., STUDY OF 401(K) PLAN FEES & EXPENSES (Apr. 13, 1998) § 2.4.1.3, *available* at http://www.dol.gov/ebsa/ pdf/401krept.pdf ("Very large plans [with assets over $500 million] can achieve even greater investment management savings by establishing separate accounts for their 401(k) assets, . . . [where] [t]otal investment management expenses can commonly be reduced to one-fourth of the expenses incurred through retail mutual funds"). Because Deere plan fiduciaries, unlike individual mutual fund investors, have the market power to negotiate at arms length with investment companies to provide institutional accounts offering higher net returns on investment, the failure to do so would be the failure to act with the "care, skill, prudence, and diligence" of "a prudent man acting in a like capacity" and would therefore constitute a breach of ERISA's fiduciary duty. 29 U.S.C. § 104(a)(1)(B).

D. Section 404(C) Of ERISA Does Not Immunize A Fiduciary From Liability For Selecting Imprudent Investment Options.

The circuit court ignored the plain language of the statute, the Department of Labor regulations, and case law when it misconstrued the language of section 404(c) of ERISA by finding that merely because a plan participant has control over the investments in his

plan account, a plan fiduciary bears no responsibility for the selection of investment options. Section 404(c) of ERISA, provides that "no person who is otherwise a fiduciary shall be liable under this part for any loss, or by reason of any breach, *which results from* such participant's or beneficiary's exercise of control." 29 U.S.C. § 1104(c)(1)(A)(ii) (emphasis added). However, before a selection of an investment option can properly be attributed to the decision of a plan participant, a court must first consider whether the plan improperly limited the scope of participant choice by selecting imprudent investment options.

Here, the court expands the 404(c) safe harbor for fiduciaries by giving the fiduciary a pass if it offers "numerous investment options." Under the court's rationale, if a fiduciary were to offer 20 investment options, with 19 of them the worst performing options in a year, there would be no liability because there were "numerous investment options" offered to participants. Participants would have exercised control even if they did not figure out which one investment option was not underperforming. However, case law already provides that "a fiduciary cannot free himself from his duty to act as a prudent man simply by arguing that other funds, which individuals may or may not elect to combine with a company stock fund, could theoretically, in combination, create a prudent portfolio." *DiFelice v. U.S. Airways Inc.*, 497 F.3d 410, 422-24 (4th Cir. 2007) ERISA section 404(c) does not condone an evasion of fiduciary responsibility in such a manner.

Moreover, the court failed to accord proper weight to the Department of Labor's interpretation of the regulation for section 404(c), which in its preamble

states that:

> The Department emphasizes, however, that the act of designating investment alternatives (including look-through investment vehicles and investment managers) in an ERISA section 404(c) plan is a fiduciary function to which the limitation on liability provided by section 404(c) is not applicable. All of the fiduciary provisions of ERISA remain applicable to both the initial designation of investment alternatives and investment managers and the ongoing determination that such alternatives and managers remain suitable and prudent investment alternatives for the plan. Therefore, the particular plan fiduciaries responsible for performing these functions must do so in accordance with ERISA.

Final Regulation Regarding Participant Directed Individual Account Plans (ERISA Section 404(c) Plans), 57 Fed. Reg. 46,906, 46,922 (Oct. 13, 1992) (to be codified at 29 C.F.R pt 2550); *see also* Amended Brief of the Secretary of Labor, Elaine L. Chao, as *Amicus Curiae* in Support of Plaintiffs-Appellants at 12, *Hecker v Deere & Co.*, Nos. 07-3605, 08-1224, 556 F.3d 575 (7th Cir. Feb. 12, 2009); *Spano v. Boeing Co* , 2007 WL 2688456, at *1 (S.D. Ill., 2007) ("The majority of courts to have interpreted ERISA § 404(c), 29 U.S.C. § 1104(c), have adopted the DOL's position" that selecting the investment options in a plan is not a

function in the exercise of which plan fiduciaries are shielded from liability by the statute) (citing cases); *but see Hecker*, 556 F.3d at 588; *Langbecker v. Elec Data Sys. Corp.*, 476 F.3d 299, 310 (5th Cir. 2007) (holding that defendants who breach their fiduciary duties are nevertheless insulated from liability as long as there exists a sufficient breadth of funds made available to participants under the plans).

E. By Diluting the Standard of Care Applicable to ERISA Fiduciaries, the Seventh Circuit's Decision Deprives Plan Participants of the Benefit of an Experienced Fiduciary Acting on Their Behalf

Conspicuously underlying the circuit court's opinion is the premise, flawed at its core, that pension plan participants should be treated the same as any investor in the marketplace. This premise is wrong because ERISA mandates that plan administrators are fiduciaries, establishing a fundamentally different relationship between the plan administrator and participant than between a mutual fund and an investor. The administrator is cast in the role of steward in relation to plan participants, who trustingly look to the plan administrator with the expectation of guidance. *See generally, e.g* , Shlomo Benartzi et al., *The Law and Economics of Company Stock in 401(k) Plans*, 50 J.L. & ECON. 45-79 (2007).

This special relationship is particularly important to the retirement security of countless Americans, who increasingly rely on 401(k) plans as their sole investment vehicles for retirement, because generally the investment market structure tolerates

an exploitive relationship between sophisticated financial advisers and naive investors. *Id.* at 14 (quoting Davis F. Swensen, Chief Investment Officer at Yale University, who stated that "'[t]he drive for profits by Wall Street and the mutual fund industry overwhelms the concept of fiduciary responsibility, leading to an all too predictable outcome: . . . the powerful financial services industry exploits vulnerable individual investors . . . .'"). Moreover, research indicates that 401(k) plan participants often are not confident of their abilities to select prudently from among the investment options available to them. For example, a survey of stock owners age 50 to 70 indicates that:

> close to three in four respondents (72-76%) have more confidence in the abilities of mutual fund managers or stock brokers to conduct transactions for them than they have in their own abilities to conduct transactions. In contrast, only one in three (33%) are confident in their ability to buy and sell individual stocks without the assistance of stock brokers.

AARP, *Investor Perceptions and Preferences Toward Selected Stock Market Conditions and Practices: An AARP Survey of Stock Owners Ages 50 and Older* (Mar. 2004), *available at* http://assets.aarp.org/rgcenter/econ/investor.pdf.

This knowledge gap between sophisticated financial advisors and ordinary plan participants emphasizes the significance of a plan fiduciary's duty

to prudently select funds. The prudence of plan administrators is evaluated in relation to that of a reasonable financial expert. Therefore, in selecting investment options to be made available to 401(k) plan participants, the function of these fiduciaries should not be merely to overwhelm plan participants with a representative sample of both the good and the bad investment options available on the open market, but rather to exercise their financial expertise, solely for the benefit of plan participants, by narrowing the field of investment options to those options with the greatest likelihood of protecting the retirement security of plan participants.

Unfortunately, the court's decision completely dilutes the standard of care applicable to ERISA fiduciaries, and flies in the face of the language of the statute and regulations. The court's decision ultimately transfers (so long as "numerous investment options" are provided) the duty of selecting prudent investments from the fiduciary to the participant by requiring the participant to weed through numerous investment options, and analyze endless, piecemealed documentation, simply to determine which funds are prudent investments—a duty that prior to *Hecker* belonged to the fiduciary. If permitted to stand, the court's decision, regrettably, invites a 401(k) fiduciary standard of conduct that would permit a plan administrator to select a fund or funds with manifestly excessive fees and it would permit no recourse to plan beneficiaries on account of such clearly inappropriately chosen investment options Indeed under the court's rationale, the ill-chosen fund(s) would have equal footing with an exemplary selection in a plan's investment menu.

CONCLUSION

The Court's grant of the petition will facilitate an interpretation of the Employee Retirement Income Security Act that will comport with the Congressional intent to protect the retirement savings and security of the nation's working people.

For the reasons stated above, *Amici* respectfully submit that the Court should grant the Petition for Writ of Certiorari for full briefing.

Respectfully submitted,

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